

Robert Hammond

(b) (6)

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July 17, 2015

Office of the Judge Advocate General  
General Litigation Division (Code 14)  
1322 Patterson Ave., SE, Suite 3000  
Washington Navy Yard, DC 20374-5066

Subject: Appeal of My FOIA Request – Performance Standards of Robin Patterson, Head,  
Department of the Navy (DON) PA/FOIA Program Office

My Personal Reference Number: FOIA DON 15-B

DON Assigned Agency FOIA Case Number DON- NAVY-2015 - 006938

References: (a) The Freedom of Information Act (FOIA)

(b) The Privacy Act

(c) CFR 164.526

(d) DoD 5700.7-R, September 1998, DoD Freedom of Information Act (FOIA)  
Program

(e) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation

(e) Joint publication of U.S. Department of Justice, Executive Office of the  
President and U.S. General Services Administration of July 2011: “Your Right to  
Federal Records” (see <http://publications.usa.gov/USAPubs.php?PubID=6080>)

(g) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program

(h) Department of Justice Freedom of Information Act Guide, May 2004 at  
Exemption 6 <http://www.justice.gov/oip/foia-guide-2004-edition-exemption-6>

Enclosure: (1) My FOIA Request of June 20, 2015 Subject FOIA Request – Performance  
Standards of Robin Patterson, Head, Department of the Navy (DON) PA/FOIA  
Program Office

(2) DON final decision letter 5720, Ser DNS-36SF/15U106036 of 29 JUN 15 with  
responsive documents

Dear Sir:

This appeal is submitted under the references above for my FOIA request dated **June 20, 2015** at  
Enclosure (1), which seeks records of the current performance standards of Ms. Robin Patterson  
as described below. The Agency’s reply is at Enclosure (2). The Agency is improperly denying  
portions of my request inappropriately citing the FOIA Exemption (b)(6) and asserting that  
release would constitute a clearly unwarranted invasion of personal privacy under 5 U.S.C.  
552(b)(6). There is no personal privacy interest in the information sought. This denial is

capricious, arbitrary and a misuse of the privacy exemption. In addition, some information has been reacted without a clear citation of the authorized exemption and the records provided are otherwise incomplete.

**Records Sought Under the FOIA.** For the government official identified as Robin Patterson Head, Department of the Navy (DON) PA/FOIA Program Office, Office of the Chief of Naval Operations 2000 Navy Pentagon Washington, DC 20350-2000, I am respectfully seeking the current and most recent performance standards. Note that I am not seeking the performance evaluations, only the performance standards. Other agencies have freely released this information for their personnel without charge.

**Basis for Appeal.**

1. **I am appealing that** the Agency has redacted the information contained in block 3 of Enclosure (2) entitled EMPLOYEE ID citing exemption (b). That is an improper citation. My appeal must be sustained on that basis and the agency must cite the specific exemption authorized under the FOIA.
2. **I am appealing that** the Agency has improperly denied portions of my request under 5 U.S.C. 552(b)(6) as shown below:
  - a. Agency has redacted the information contained in block 5 of Enclosure (2) entitled GENERAL SCHEDULE (GS) GRADE AND STEP. This same information has been released for other Department of Navy personnel, including for Mr. G. E. Lattin, Director, Department of Navy General Litigation Division (Code 14) to whom this appeal is submitted. Moreover, release of this information is specifically authorized DoD 5400.11-R as shown below:

DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program

C4.2.2.5.1. DoD Civilian Employees:

    - C4.2.2.5.1.1.1. Name.
    - C4.2.2.5.1.1.2. Present and past-position titles.
    - C4.2.2.5.1.1.3. Present grade.
    - C4.2.2.5.1.1.4. Present annual salary rate.
    - C4.2.2.5.1.1.5. Present and past-duty stations.
    - C4.2.2.5.1.1.6. Office and duty telephone number.
    - C4.2.2.5.1.1.7. Current Position Description.
  - b. The Agency states that, “this record contains personally identifiable information (e.g . , names, phone numbers, and email addresses), which is exempt from disclosure under 5 U.S.C. § 552(b) (6), since release of this information would result in a clearly unwarranted invasion of personal privacy. The portions containing this information have been marked and redacted.” As shown above this information is specifically authorized for release and has been released for other Department of Navy personnel, including Mr. G. E. Lattin, Director,

Department of Navy General Litigation Division (Code 14) to whom this appeal is submitted.

3. **I am appealing that** the Agency did not perform a reasonable search for responsive records and did not provide the specific record sought under the FOIA. Notwithstanding the improper denial above, the record provided is the interim performance appraisal, which is blank for critical elements and all other entries. The Agency did not provide the Performance Plan that is in effect for the beginning of the rating period containing the critical elements and other information.
4. **I am appealing that** the Agency has cited an improper date for my FOIA request, which is dated June 20, 2015 (vice June 22, 2015 stated in the Agency's letter) and was submitted via the web on June 20, 2015.

**Appellate Authority Action Requested. I am asking that:**

- (1) each of the elements of the basis of my appeal be addressed separately;
- (2) each element of my appeal be sustained;
- (3) my FOIA request be remanded back to the Agency for direct reply to me; and,
- (4) I be granted new appellate rights following a subsequent reply by the Agency.

**Strong Presumption in Favor of Disclosure.**

- "In the Act generally, and *particularly under Exemption (6)*, there is a strong presumption in favor of disclosure." Local 598 v. Department of Army Corps of Engineers, 841 F.2d 1459, 1463 (9th. Cir. 1988) (emphasis added). In that case, the Ninth Circuit reviewed the context of applicable Exemption 6 case law:
  - The Freedom of Information Act embodies a strong policy of disclosure and places a duty to disclose on federal agencies. As the district court recognized, 'disclosure, not secrecy, is the dominant objective of the Act.' Department of the Air Force v. Rose, 425 U.S. 352, 361, 96 S.Ct. 1592, 1599, 48 L.Ed.2d 11 (1976). 'As a final and overriding guideline courts should always keep in mind the basic policy of the FOIA to encourage the maximum feasible public access to government information....' Nationwide Bldg. Maintenance, Inc. v. Sampson, 559 F.2d 704, 715 (D.C.Cir.1977). As a consequence, the listed exemptions to the normal disclosure rule are to be construed narrowly. See *Rose*, 425 U.S. at 361, 96 S.Ct. at 1599. *This is particularly true of Exemption (6). Exemption (6) protects only against disclosure which amounts to a 'clearly unwarranted invasion of personal privacy.'* That strong language 'instructs us to 'tilt the balance [of disclosure interests against privacy interests] in favor of disclosure.'"

- Id. (emphasis added), citing Washington Post Co. v. Department of Health and Human Servs., 690 F.2d 252, 261 (D.C.Cir.1982) (quoting Ditlow v. Shultz, 517 F.2d 166, 169 (D.C. Cir.1975)).

This appeal is separate and distinct from any other appeals that I may file and may not be combined with any other appeal. I am not agreeing to combining separate appeals, as this would be improper, potentially distorting FOIA reporting to Congress and impeding separate judicial review (if that becomes necessary). If you deny all or any part of this appeal, please cite each specific exemption you think justifies your determination and notify me of further remedies available under the law.

I will greatly appreciate your thoughtful consideration of my request. Please contact me if you have any questions regarding this request. Thank you in advance.

With my respect,

(b) (6)

Robert Hammond

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(b) (6)

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@aol.com

June 20, 2015

Department of the Navy via FOIA Online, <https://foiaonline.regulations.gov/> and [donfoia-pa@navy.mil](mailto:donfoia-pa@navy.mil)

Subject: FOIA Request – Performance Standards of Robin Patterson, Head, Department of the Navy (DON) PA/FOIA Program Office

Requester Personal Reference number: FOIA DON 15-B

References: (a) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011, “Your Right to Federal Records”  
(b) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program  
(c) DoD 5400.7-R, September 1998, DoD Freedom of Information Act (FOIA) Program  
(d) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation  
(e) GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act  
(f) Department of Justice Handbook for Agency Annual Freedom of Information Act Reports

Dear Sir.

I am submitting this request under the Freedom of Information Act, U.S.C. subsection 522. If you deem that any portion of this request must be processed under the Privacy Act, please notify me in writing within the FOIA response timeframe and continue processing under that Act. If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information under the applicable Act(s) and notify me of appeal procedures available under the law. Please preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer.

**Records Sought Under the FOIA.** For the government official identified as Robin Patterson Head, Department of the Navy (DON) PA/FOIA Program Office, Office of the Chief of Naval Operations 2000 Navy Pentagon Washington, DC 20350-2000 I am respectfully seeking the current and most recent performance standards. Note that I am not seeking the performance evaluations, only the performance standards. Other agencies have freely released this information for their personnel without charge.

**Public Interest.** There is public interest in records whether or not performance standards of those adjudicating FOIA requests have incorporated governing laws, regulations and policies. Further, there is public interest in whether or not such offices are following prescribed procedures and are

processing appeals in a uniform, fair and consistent manner from all requesters. The requested records concern "the operations or activities of the government." Release of all records sought establishes accountability of government office and personnel. The disclosure is "likely to contribute" to an understanding of government operations or activities and contribute to an understanding of the subject by the public. This is a simple request. Records would likely be maintained by the WRNMMC Department Chief, HIPAA/Privacy Act/FOIA/Civil Liberties Office.

**Agreement to Pay Fees.** I agree to pay fees for searching or copying the records up to \$100. If the fees exceed this amount please advise me of the cost. I believe that the records that I am seeking contribute significantly to public understanding of the operations or activities of the Department of Defense. I do not believe that there should be any charge for providing these records, as there is public interest in government operations and procedures for correcting privacy act request and alleged Privacy Act violations in a uniform, fair and consistent manner for all requests/complaints. I am a private individual not seeking documents for commercial use, such that the following applies: "No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge." I would note that because I am requesting a PDF file, there should not be a per page copy fee. This is a simple request. All documents should have been consolidated into a case file, per governing laws, regulations and policies. Searching for records beyond the case files may be necessary, but there should not be a fee to the requester for any failure by DHA or WRNMMC to properly store all documents in the case file and retain them in accordance with an approved NARA record schedule. Should you determine that there is a charge for this request, please include the calculation of the charge and along with your determination of the costs of routine collection and processing of the fee. As there is public interest (discussed above), I am requesting a fee waiver.

### **Some Applicable References.**

- Reference (a) states that for requests 'that will require more than ten days for the agency to process, the FOIA requires agencies to assign a tracking number to your request. Each agency must provide a telephone number or website by which a requester can use the assigned tracking number to obtain information about the status of a pending request.'
- DoD 5400.11-R, May 14, 2007, paragraph C3.1.1O. states: "Time Limits. "DoD Components normally shall provide access within 20 working days after receipt of the request. If access cannot be given within the 20 working day period, the requester shall be notified in an interim response." Please provide me a tracking number for this request.
- Reference (c) states, "DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust."

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to

complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you in advance.

With my respect,

(b) (6)

Robert Hammond

Copy to:

(b) (6) @navy.mil (b) (6) @navy.mil, CC (b) (6) @FE.NAVY.MIL,  
(b) (6) @navy.mil, (b) (6) @mail.mil, donfoia-pa@navy.mil, (b) (6) @navy.mil,  
(b) (6) @navy.mil





## DEPARTMENT OF THE NAVY

OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON, DC 20350-2000

5720

Ser DNS-36SF/15U106036

29 JUN 15

Mr. Robert Hammond

(b) (6)

Dear Mr. Hammond:

This letter is sent in reference to your Freedom of Information Act (FOIA) request dated June 22, 2015. Your request was received in our office on the same day and assigned FOIA case number DON-NAVY-2015-006938.

You requested: "For the government official identified as Robin Patterson Head, Department of the Navy (DON) PA/FOIA Program Office, Office of the Chief of Naval Operations 2000 Navy Pentagon Washington, DC 20350-2000 I am respectfully seeking the current and most recent performance standards. Note that I am not seeking the performance evaluations, only the performance standards. Other agencies have freely released this information for their personnel without charge."

In regard to your request, a search of our offices for potentially responsive documents produced one record: "The Department of the Navy (DON) Interim Performance Appraisal Form for Robin R. Patterson." Upon review, we determined that this record contains personally identifiable information (e.g., names, phone numbers, and email addresses), which is exempt from disclosure under 5 U.S.C. § 552(b)(6), since release of this information would result in a clearly unwarranted invasion of personal privacy. The portions containing this information have been marked and redacted. The remaining apportioned information is being released to you.

Because your request is partially denied, you are advised of your right to appeal the denial of your request by writing to:

Office of the Judge Advocate General  
1322 Patterson Ave, SE, Ste 3000  
Washington Navy Yard, DC 20374-5066

Enclosure (2)



29 JUN 15

Your appeal must be postmarked within sixty calendar days from the date of this letter. A copy of your initial request and this letter must accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter. In order to expedite the appellate process and ensure full consideration of your appeal, your appeal should contain a brief statement of the reasons you believe this decision to be in error.

Additionally, the 2007 FOIA amendments directed the Chief FOIA Officer of each agency to designate one or more FOIA Public Liaisons. Please be advised that the DON FOIA Public Liaison is available to assist in disputes between the requester and the agency. The role of the Liaison is to provide FOIA requesters with an avenue to raise concerns about the service received from a Navy Requester Service Center. You may write to the DON FOIA Public Liaison at Department of the Navy Chief Information Office (DON CIO), 1000 Navy Pentagon, Washington, DC 20350-1000. Alternately, you may contact the DON FOIA Public Liaison via telephone at (703) 695-1297, via fax at (703) 614-4388, or via email at DONFOIAPublicLiaison@navy.mil.

Questions regarding the action this office has taken during the processing of your request may be directed to our FOIA Service Center at (202) 685-0412.

Sincerely,

(b) (6)

A large black rectangular redaction box covers the signature area.

By direction

# DEPARTMENT OF THE NAVY (DON) INTERIM PERFORMANCE APPRAISAL FORM

## PRIVACY ACT STATEMENT

**AUTHORITY** 5 U.S.C Chapter 43 Performance Appraisal and SORN DPR 34

**PURPOSE(S)** The information requested is used for performance planning and results reporting documentation requirements for the DON Interim Performance Management System for positions transitioned from NSPS to GS

**ROUTINE USES** The information provided in this form will only be accessed by command personnel with a defined need to know for the purpose of meeting the requirements of the DON Interim Performance Management System

**DISCLOSURE** Voluntary, however failure to provide the information requested may impede, delay or prevent further processing

## SECTION 1 - PERFORMANCE PLAN

### PART A - ADMINISTRATIVE DATA

<b>1. APPRAISAL PERIOD:</b>		<b>a. START DATE:</b> 01 Oct 2014	<b>b. END DATE:</b> 30 Sep 2015
<b>2. EMPLOYEE NAME (Last, First, Middle Initial):</b> PATTERSON ROBIN, W		<b>3. EMPLOYEE ID:</b> (b) (6)	
<b>4. POSITION TITLE:</b> SUPV MANAGEMENT ANALYST		<b>5. GENERAL SCHEDULE (GS) GRADE AND STEP:</b> (b) (6)	
<b>6. ORGANIZATION:</b> 47039 CNO OP-09B1			

### PART B - PERFORMANCE PLAN DOCUMENTATION

<b>1. POSITION DESCRIPTION CERTIFICATION</b> <i>(to be completed by Rating Official)</i>	<input type="checkbox"/> I certify that the employee's position description (PD) is current and accurate
<b>2. PLAN DOCUMENTATION</b> The following signature blocks document the required steps in the appraisal process. The Performance Plan column must be filled in upon initial development of the performance plan. Should any changes to the plan be made during the appraisal period, the Adjusted Elements column(s) on Page 2 will be filled in to reflect the information at the time of the change. The Progress Review column must be filled in upon completion of the required Progress Review. The Annual Assessment column must be filled in upon completion of the required Annual Assessment at the end of the appraisal period. Should a Close-out Assessment be required, the Close-out Assessment column(s) on Page 2 will be filled in to reflect the information at the time of the Close-out Assessment.	

Once Senior Rating Official approves each part, fields in the part will be locked for further editing.

	PERFORMANCE PLAN	PROGRESS REVIEW	ANNUAL ASSESSMENT
<b>MEANS OF DELIVERY:</b>	Face-to-Face	Face-to-Face	Face-to-Face
<b>RATING OFFICIAL NAME, TITLE, ORGANIZATION:</b>			
<b>RATING OFFICIAL SIGNATURE:</b>			
<b>RATING OFFICIAL SIGNATURE DATE:</b>			
<b>SENIOR RATING OFFICIAL NAME, TITLE, ORGANIZATION:</b>			
<b>SENIOR RATING OFFICIAL SIGNATURE:</b>			
<b>SENIOR RATING OFFICIAL SIGNATURE DATE:</b>			
<b>Employee Signature Implies Acknowledgement And Does Not Constitute Agreement With Content</b>			
<b>EMPLOYEE SIGNATURE:</b>			
<b>EMPLOYEE SIGNATURE DATE:</b>			

#### PART D - CRITICAL ELEMENT PERFORMANCE STANDARDS

A critical element performance standard is a general description of a level, requirement, or expectation of employee performance that must be met to be appraised at a particular level of performance. Performance standards are contained in Appendix C of the document Interim Performance Management System: Covering Positions Transitioning to the General Schedule from NSPS and are defined by career stage - entry, journey, and expert. A single career stage will be used for all critical elements. The supervisory performance standard is used only for supervisory critical elements. Select the appropriate career stage below.

☐ Entry ☐ Journey ☒ Expert

Supervisor: Yes ☒ No ☐

**Career Stage: Expert**

**Element Level: Acceptable**

- Delivered on each critical element with broad and significant impact that was in alignment with the mission and objectives of the organization as well as applicable authorities, standards, policies, procedures and guidelines anticipating and overcoming significant obstacles.
- Established priorities and coordinated work across projects, programs or people, balancing work demands and anticipating and overcoming obstacles to achieve a timely and positive outcome.
- Demonstrated high standards of professional conduct and represented the organization or work unit effectively

**Career Stage: Expert**

**Element Level: Unacceptable**

- Failed to achieve all or part of the stated critical element; or
- Failed in the accomplishment of priorities and coordination of work across projects, programs or people; consistently failed to balance work demands resulting in an untimely and unproductive product or event; or
- Demonstrated poor cooperation or inability to work with others.

**Career Stage: Supervisory**

**Element Level: Acceptable**

- Achieved expected results by effectively carrying out established supervisory responsibilities.
- Demonstrated adequate EEO and Affirmative Action awareness in areas of supervision and leadership.
- Supported use of Alternative Dispute Resolution to resolve conduct and performance concerns at the lowest level and early timeframe to ensure the workplace provided a harmonious climate.
- Instituted measures to foster productivity and safety.
- Provided timely performance feedback at a minimum of two times during the performance cycle; took appropriate corrective action to address instances of inappropriate conduct and/or unacceptable performance.

**Career Stage: Supervisory**

**Element Level: Unacceptable**

- Failed in the accomplishment of priorities and coordination across projects, programs, and people; consistently failed to balance work demands of employees resulting in untimely or unproductive products or events; or
- Failed to demonstrate adequate EEO and Affirmative Action awareness in areas of supervision and leadership; or
- Failed to support the use of Alternative Dispute Resolution to resolve conduct and performance concerns to ensure the workplace provides a harmonious climate; or
- Failed to provide timely performance feedback as required during the rating cycle or to take appropriate corrective action to address instances of inappropriate conduct and/or unacceptable performance.

**PART E0 - ORIGINAL CRITICAL ELEMENTS**

CRITICAL ELEMENT 1	TITLE:
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CRITICAL ELEMENT 2	TITLE:
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CRITICAL ELEMENT 3	TITLE:
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CRITICAL ELEMENT 4	TITLE:
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CRITICAL ELEMENT 5	TITLE:
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PART E2 - ADJUSTED CRITICAL ELEMENTS

CRITICAL ELEMENT 1

TITLE:

CRITICAL ELEMENT 2

TITLE:

CRITICAL ELEMENT 3

TITLE:

CRITICAL ELEMENT 4

TITLE:

CRITICAL ELEMENT 5

TITLE:

**PART F - PROGRESS REVIEW**

At least one progress review will be completed for each employee during the appraisal period. At this time, the employee will be informed of how they are progressing with regard to their critical elements. Progress reviews do not require the assignment of a rating of record.

CRITICAL ELEMENT 1	TITLE: MANAGE DON FOIA PROGRAM
CRITICAL ELEMENT 2	TITLE: MANAGE DON PRIVACY PROGRAM
CRITICAL ELEMENT 3	TITLE: Supervisory
CRITICAL ELEMENT 4	TITLE:
CRITICAL ELEMENT 5	TITLE:

**EMPLOYEE SELF-ASSESSMENT**

**RATING OFFICIAL ASSESSMENT**

PART G1 - CLOSE-OUT ASSESSMENT

CRITICAL ELEMENT 2      TITLE:

EMPLOYEE SELF-ASSESSMENT

RATING OFFICIAL ASSESSMENT



PART G1 - CLOSE-OUT ASSESSMENT

CRITICAL ELEMENT 4    TITLE:

EMPLOYEE SELF-ASSESSMENT

RATING OFFICIAL ASSESSMENT

PART G2 - CLOSE-OUT ASSESSMENT

CRITICAL ELEMENT 1    TITLE:

EMPLOYEE SELF-ASSESSMENT

RATING OFFICIAL ASSESSMENT

PART G2 - CLOSE-OUT ASSESSMENT

CRITICAL ELEMENT 3    TITLE

EMPLOYEE SELF-ASSESSMENT

RATING OFFICIAL ASSESSMENT

PART G2 - CLOSE-OUT ASSESSMENT

CRITICAL ELEMENT 5      TITLE

EMPLOYEE SELF-ASSESSMENT

RATING OFFICIAL ASSESSMENT

PART G3 - CLOSE-OUT ASSESSMENT

CRITICAL ELEMENT 2    TITLE.

EMPLOYEE SELF-ASSESSMENT

RATING OFFICIAL ASSESSMENT

PART G3 - CLOSE-OUT ASSESSMENT

CRITICAL ELEMENT 4    TITLE:

EMPLOYEE SELF-ASSESSMENT

RATING OFFICIAL ASSESSMENT

**PART H - ANNUAL ASSESSMENT**

To receive a rating of record, an employee must have performed for a minimum period of 90 days under an approved performance plan in the same position. If necessary, an employee's rating period may be extended by the rating official with approval from the senior rating official beyond the end of the rating period to allow for the 90-day minimum to be met, as long as the extension does not interfere with the ability to manage any part of the rating and rewarding process for the employee's organization.

CRITICAL ELEMENT 1      TITLE    MANAGE DON FOIA PROGRAM

EMPLOYEE SELF-ASSESSMENT

RATING OFFICIAL ASSESSMENT



PART H - ANNUAL ASSESSMENT

CRITICAL ELEMENT 3      TITLE Supervisory

EMPLOYEE SELF-ASSESSMENT

RATING OFFICIAL ASSESSMENT

PART H - ANNUAL ASSESSMENT

CRITICAL ELEMENT 5    TITLE

EMPLOYEE SELF-ASSESSMENT

RATING OFFICIAL ASSESSMENT